

Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position

Number: 95-PP-2

Date: August 4, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☒ 14 CFR part 121, appendix I, V.,G.; preamble to August 19, 1994, final rule
- ☐ 49 CFR part 40
- ☐ None

Subject: Follow-up Drug Testing

Subtopic(s): Required number of tests

Issue

The Federal Aviation Administration (FAA) antidrug rule requires covered employers to implement a reasonable program of unannounced testing of each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a drug test or receiving a verified positive drug test result.

How is the number and frequency of the required follow-up drug tests determined?

Policy Position

An individual who fails or refuses an FAA-mandated drug test and after the required MRO or substance abuse professional evaluation (SAP) is determined not to be in need of assistance in resolving problems associated with the illegal use of drugs, must be subjected to follow-up testing in a number and frequency determined by the employer's MRO. The MRO cannot determine that no follow-up testing is required, i.e., at least one follow-up test must be conducted.

An individual who fails or refuses an FAA-mandated drug test and after the required MRO or SAP evaluation is determined to be in need of assistance in resolving problems associated

with the illegal use of drugs must be subjected to follow-up testing in a number and frequency determined by the employer's MRO. **However**, the individual must be subjected to a minimum of six follow-up tests in the first 12 months following the individual's return to the performance of safety-sensitive functions.

In either case, as determined by the MRO, the individual may be subjected to follow-up testing for a period of up to 60 months following the commencement or return to the performance of a safety-sensitive function.

References/Sources

1. 14 CFR part 121, appendix I, V., G., *Follow-up Testing*, pages 42929-30 of the August 19, 1994 final antidrug rule.
2. Preamble discussion, *Return to Duty and Follow-up Testing*, pages 42925-26 of the August 19, 1994, final antidrug rule.

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-10

Date: October 18, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Individual access to test and laboratory
certification results. (49 CFR §40.37)

Subtopic(s): None

Issue

What records are considered "relating to the results of any relevant certification, review, or revocation-of-certification proceedings" and must be released by the employer?

Background

The Department of Transportation's (DOT) rule 49 CFR part 40-Procedures for Transportation Workplace Drug Testing Programs-provides that employees who are subject to drug testing under part 40 shall, upon written request, have access to any records relating to his/her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings. (§40.37)

Policy Position

Part 40 applies to DOT regulated employers, and the DOT construes §40.37 as requiring these employers to provide employees with certain information. The employer can arrange to make this information available upon written consent of the employee or can arrange for the laboratory to provide such information directly to the employee.

"Any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings" are intended to include documents in the possession of the laboratory pertaining to the laboratory's evaluation by the Department of Health and Human Services (DHHS) and its agents. Specifically, the employer (or the laboratory acting on the employer's behalf) is obligated to provide to the employee:

- Critique of the laboratory developed as the result of a DHHS inspection;
- Any remedial action or program letters issued to the laboratory as the result of an inspection; and
- Proficiency test reports.

This obligation pertains only to records concerning a "relevant" certification, review, etc. The information that must be released, as indicated above is information that is relevant to the specific test of the individual employee who has made a written request for it. Only documentation reasonably contemporaneous with the specific test in question is relevant. For example, records pertaining to the last DHHS review of the laboratory before the test took place, and records pertaining to the next DHHS review of the laboratory after the employee's test took place, are relevant. Records pertaining to matters before the former or after the latter are not.

There are some limits to the obligation to provide this information. The policy behind §40.37 is to allow a specific individual employee access to information that may relate to a test result that can affect the employee's career. The release of information under §40.37 is authorized only for use in direct connection with proceedings concerning a specific employee's drug test result. The release of such information may be restricted to parties who sign an agreement to use the information only for this limited purpose.

References/Sources

1. 49 CFR §40.37 Individual access to test and laboratory certification results.
2. September 8, 1995 letter from Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Office of the Secretary of Transportation, to Mr. Lee Seham.

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-16

Date: 11/7/95

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☐ 49 CFR part 40
- ☒ None

Subject: Additional Testing on Specimens Reported as
Negative

Subtopic(s):

Issue

May additional testing be conducted on a (DOT) specimen reported by the laboratory as negative?

Background

Section 2.4(e)(3) of the Department of Health and Human Service's (DHHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" states, "specimens that test negative on all initial immunoassay tests shall be reported as negative. No further testing of those negatives specimens for drugs is permitted and the specimens shall be either discarded or pooled for use in the laboratory's internal quality control program."

Policy Position

The DOT requires use of DHHS-certified laboratories to do all DOT-required testing, and, with limited exceptions, incorporates DHHS requirements as its own. Therefore, the above DHHS requirement is a DOT requirement as well. When a DOT specimen is reported as negative by the laboratory, no additional testing of the specimen is permissible. (OST Guidance Interpretation)

References/Sources

Office of Drug Enforcement and Program Compliance 49 CFR
part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-18

Date: 11/7/95

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Specimen Collections Conducted at Only Approved
Department of Health and Human Services (DHHS)
Facilities

Subtopic(s): DHHS Certification

Issue

Are urine specimen collections to be collected only at DHHS-
approved facilities?

Background

No requirement exists for urine specimens to be collected at
DHHS-certified laboratories.

However, 49 CFR part 40 requires that urine specimens be
tested at DHHS-certified laboratories.

Policy Position

DHHS laboratories do not collect urine specimens. They
receive the specimens from the collection facilities (by
courier or mail service) and conduct the required tests.

Facilities that serve as collection sites and individuals
who serve as collectors of urine specimens require no DHHS
certification. Upon collecting the urine specimen from the
donor, the collector must send the specimen to a DHHS-
certified laboratory for testing. (OST Guidance
Interpretation)

References/Sources

14 CFR part 121, appendix I, I

49 CFR 40.39

Office of Drug Enforcement and Program Compliance 49 CFR
part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-20

Date: 11/7/95

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Direct Observation Specimen Collections

Subtopic(s): Same-Gender Observed Collections

Issue

Under what circumstances must an employee be observed while submitting a urine sample?

Under what circumstances is observation an optional choice of the employer?

Background

49 CFR 40.25(e) addresses situations under the Department of Transportation (DOT) regulation where direct observation specimen collections are either mandatory or discretionary.

Policy Position

A direct observation collection is mandatory only when:

1. The collection site person observes behavior clearly indicating an attempt to tamper;
2. The specimen temperature is outside the normal range and an oral body temperature reading is refused or is inconsistent with the specimen temperature.

The collection site person would contact a higher-level supervisor, or a designated employer representative, to

relay the circumstances which require the observed collection. The supervisor or representative would review the circumstances for compliance with Part 40 requirements, and finding such, would approve in advance the decision to do the observed collection. The collection site person--of the same gender as the employee--would immediately conduct the observed collection.

Employer Option: The employer has the discretion to require the employee to provide a specimen under direct observation collection procedures for the return-to-duty test and any subsequent follow-up tests. The employer also has the authority to require an employee to provide a specimen under direct observation procedures when the specific gravity and creatinine content of the employee's previous sample are below the regulatory standards. In the later case, the Medical Review Officer (MRO) would receive the test results from the laboratory (i.e., positive, negative, or in the case where no immunoassay result is reported) along with information that the specimen had a specific gravity of less than 1.003 and creatinine concentration less than 0.2g/L. The MRO would inform the employer of the laboratory findings. The employer would make the decision to do a direct observation collection on the employee on the next DOT test that the employee is required to take.

It would be the employer's responsibility to notify the employee of the decision to exercise the option to do the collection(s) under the direct observation procedure. The employer would authorize the collection site person to do the observed collection(s), as applicable.

Directly observed collections are always performed by a collector of the same gender as the employee. (OST Guidance Interpretation)

References/Sources

49 CFR 40.25

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-21

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Laboratories that Test Split Specimens Have
Employee Name for Billing

Subtopic(s):

Issue

On the testing of a split specimen, is it necessary to maintain anonymity of a person, at the laboratory level, when both the primary laboratory and the laboratory testing the split specimen may have fees and could directly bill the employee?

Background

49 CFR 40.23(a) addresses mandatory use of the Federal Drug Testing Custody and Control Form in Department of Transportation urine collection and testing. This paragraph states, in part, that *"...personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory."*

Policy Position

If circumstances arise in which the Medical Review Officer orders a test of the split specimen, at the request of the employee, no additional identifying information on the employee may be provided to the laboratory that will be testing the split specimen.

As directed by section 40.33(f), "...the Medical Review Officer (MRO) shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis." This request would reference only items contained on the face of the Drug Testing Custody and Control Form (e.g., Specimen Identification No., SSN or Employee ID No., Collection Date, etc.); the MRO would not specify the employee's name.

Should a personal check (bearing the employee's name) accompany the request (e.g., a letter from the MRO), the MRO should not make any particular reference linking the split specimen request with the person signing the check.

In actuality, the primary laboratory will most likely bill the employer for the cost of sending the split specimen to the split laboratory; the split laboratory will normally require a Cashier's check, money order, or an account to be set up (generally by the employer) prior to initiating processing. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-22

Date: November 7, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Laboratory "One-Stop Shopping" to Include List of MROs

Subtopic(s):

Issue

May a laboratory provide "one-stop shopping" to an employer by including the services of a medical review officer (MRO) or a list of MROs (which the laboratory does not employ) from which the employer or client could select a specific MRO?

Background

49 CFR 40.29(n)(6) states *"The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO."*

Substantially similar language appears in the June 9, 1994, revision of the "Department of Health and Human Services (DHHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs" (59 FR 29908, 29923).

Policy Position

Under current Department of Transportation (DOT) interpretation of the rule, a laboratory would be prohibited from supplying a limited list of MROs from which the employer would select individuals that would provide MRO

services. In this circumstance, there is a clear financial advantage to the MROs who appear on the laboratory list, since this makes them among the candidates for use by that laboratories' clients.

This advantage could readily be viewed as providing these MROs an incentive to maintain a good relationship with the laboratory, so as to ensure that they remain on the list, which is in their financial interest. The existence of this incentive could, in turn, call into question the objectivity and independence of the MROs in the review of the test results and the reporting to relevant officials of any potential errors in test results or procedures.

The regulatory prohibition is not limited to actual, demonstrated conflict of interest. It includes matters that "may be construed as a potential conflict of interest." The DOT position is that the above described laboratory arrangement presents the appearance of a conflict of interest. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-23

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Laboratory Continues to Submit Monthly Summary Reports

Subtopic(s):

Issue

May a laboratory continue to submit monthly summary reports to the employer/consortia or is the laboratory limited to quarterly reports only?

Background

49 CFR 40.29(g)(6) states "The laboratory shall provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided that the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employer within 14 days of receipt of the laboratory report."

Policy Position

The Department of Transportation changed the requirement for a monthly statistical report to a quarterly report to provide cost savings to the industry without substantially decreasing the effectiveness of the report (59 FR 43001). Although the original regulatory language appears to require reporting only on a quarterly basis, the intent of this change was to require, as a minimum, a quarterly report, but

not to limit those employers or laboratories who desired monthly reports.

Monthly reports can be generated provided the reports do not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If a laboratory provides monthly reports, there is no requirement to additionally provide a quarterly aggregate report.

Likewise, the regulatory requirement to prevent individual identifying information remains for both monthly and quarterly reports. If a report is withheld for this reason, the laboratory will notify the employer. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-24

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Prescription for Marinol Reported as Negative

Subtopic(s): Prescription Medicines That May
Compromise Safety

Issue

If the Medical Review Officer (MRO) determines that a donor has a legitimate prescription for Marinol, would this be reported as a negative result?

What if in the MRO's opinion, the use of the prescribed medication may compromise safety?

Background

49 CFR 40.33 states in part, that "...A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a Department of Transportation (DOT) agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of the results."

49 CFR 40.33(i) states in part, that "the MRO may disclose such [medical] information to the employer, a DOT agency, or a physician responsible for determining the medical qualification of the employee....if...the information indicates that continued performance by the employee...could pose a significant safety risk. (2) Before obtaining medical information from the employee as part of the

verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph...."

Policy Position

The DOT's interpretation has been that if the MRO can determine that the donor has a legitimate prescription, the positive result would be "downgraded" to a negative. This would apply to any legitimately prescribed drug, including Marinol.

If the MRO determines that the use of that particular prescription/substance may compromise safety in the performance of a transportation related safety-sensitive function (whether or not the substance is prescribed for the appropriate condition), the MRO should discuss this with the donor's (prescribing) physician. The donor's physician may decide to prescribe an alternate substance that may not have adverse affects on the donor's performance of his/her duties.

If after talking to the prescribing physician, the MRO still determines that a safety risk exists, he/she may inform the employer, DOT, or the employer's physician of the existence of a medical condition that could pose a significant safety risk if the donor continues performing a safety-sensitive function.

However, the MRO must ensure that he/she inform the employee prior to the verification process that this (medical) information may be provided to a third party. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-25

Date: March 14, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Second and Different Medical Review Officer (MRO)
Used for Split Specimen Results

Subtopic(s):

Issue

Does the Department of Transportation (DOT) drug testing rule permit the use of a second and different MRO to whom the results of the split specimen can be sent by the second laboratory?

Background

49 CFR 40.33(f) states in part "*the MRO shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s)...the MRO shall cancel the test....*"

The rule does not address the use of a second and different MRO to whom the results of the split specimen would be submitted.

Policy Position

49 CFR part 40 does not address the issue of employers utilizing one MRO or MRO organization to receive the results of the testing of the primary specimen while designating a second MRO or MRO organization for the sole purpose of

receiving the results of the split specimen testing by the second laboratory. However, it is DOT's interpretation of part 40 that such a procedure is not permissible.

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-26

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Medical Review Officer (MRO) Management Company

Subtopic(s): Negative Test Results Sent to Management Company

Issue

Is there such a thing as an MRO management company or does the rule specify that a single certified MRO review each laboratory result from tested employees and personally transmit the test results to the specific employer?

Does the law require that the owner of an MRO management company be a physician?

Do negative test results have to be handled by a physician MRO, or can the results be handled by the MRO management company administrators?

Background

49 CFR 40.3 defines an MRO to be "*A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program....*"

49 CFR 40.29(g) states that "*The MRO shall report whether the test is positive or negative....*"

49 CFR 40.33(a) states "*...A positive test result does not automatically identify an employee/applicant as having used*

drugs in violation of a DOT agency regulation...review shall be performed by the MRO prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.... The duties of the MRO with respect to negative results are purely administrative."

Policy Position

While 49 CFR part 40 makes no mention of an "MRO management company", the regulations do address the role of a consortium or third party administrator (C/TPA).

The rules do not permit a C/TPA to receive drug testing results directly from either the laboratory or from the MRO. The laboratory results are reported directly to the MRO, and the MRO results are reported directly to the employer.

Through interpretation of Section 40.33(a), the DOT has permitted the administrative review to be conducted by staff persons working under the direct supervision of the MRO. While allowing this delegation of MRO responsibility, the DOT never intended nor can it condone a practice which allows for MROs to appoint outside "agents" to perform this review. The MRO should have a direct supervisory relationship with the reviewer and not simply have access to the "process" of the administrative review.

Conversely, a C/TPA cannot contract for the MRO to only review positive drug test results leaving the review or processing of negatives to the C/TPA. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-27

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Consortium/Third-Party Administrator (C/TPA)
Acting as Medical Review Officer's (MRO) Agent and
Administratively Reviewing Negatives

Subtopic(s):

Issues

Can a C/TPA act as an agent of the MRO for the purpose of conducting administrative reviews of all negative urine drug test results? Can a C/TPA receive drug testing results directly from the laboratory?

Background

49 CFR 40.33(a) states "...A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a Department of Transportation (DOT) agency regulation...review shall be performed by the MRO prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. (2) The duties of the MRO with respect to negative results are purely administrative."

Policy Position

Through interpretation of Section 40.33(a), the DOT has permitted the administrative review of negative results to be conducted by a staff person working under the direct

supervision of the MRO. While allowing this delegation of MRO responsibility, the DOT never intended nor can it condone a practice which allows for MROs to appoint outside "agents" to perform this review. The MRO should have a direct supervisory relationship with the receiver and not simply have access to the "process" of the administrative review.

Conversely, a C/TPA cannot contract for the MRO to only review positive drug test results leaving the review or processing of negatives to the C/TPA.

Additionally, 49 CFR 40.29(g) requires that all drug test results be transmitted by the laboratory directly to the MRO. This must be to the MRO's place of business and not to a subsidiary or contractor.

There is also the requirement that, regardless of what forms/records a C/TPA maintains for an employer, notification of all positive results to the employer will be performed by the MRO and not through or by anyone else.
(OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-28

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Doctor of Chiropractic Serving as Medical Review Officer (MRO)

Subtopic(s):

Issue

Can a Doctor of Chiropractic, holding a Certified Addiction Professional Degree, serve as an MRO?

Background

49 CFR 40.3 defines an MRO as "*A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.*"

In addition, section 40.32(2)(b) states "*The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.*"

Policy Position

A Doctor of Chiropractic, holding a Certified Addiction Professional Degree, is not considered to be a licensed

medical doctor or doctor of osteopathy and, therefore,
cannot serve as an MRO. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR
part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-29

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Medical Review Officer (MRO) Name or Company Name
on Chain of Custody Form

Subtopic(s):

Issue

Is a specific MRO's name required in Step 1 on the Federal Drug Testing Custody and Control Form, or can a clinic, hospital, health care organization, or MRO company name appear in the MRO name and address area?

Background

49 CFR 40.23(a)(1) requires, among other information, that the MRO's name and address appear on the chain of custody form.

In many cases, where only the name of a clinic, hospital or company appears on the mailing address, the laboratory results are sent to the clinic or hospital and are either circulated through numerous departments or, in some cases, never reach the MRO.

Policy Position

The Department of Transportation has determined that a specific physician's name and address is required in Step 1 of the Federal Drug Testing Custody and Control Form as opposed to only a generic clinic, health care organization, or company name. The name should be that of a responsible

physician rather than an administrative staff member or other company official.

However, a company name can appear as part of the address, provided it is followed by or includes the MRO's name. Collection sites use this address to send copies of the MRO's custody and control form, and drug testing laboratories use it to submit laboratory results to the MRO. The use of the MRO name will preclude potential compromises of confidentiality.

The physician named in Step 1 can be the MRO who will actually perform the verification review or the name of a physician within the practice (company), but not necessarily the one who actually performs the verification (in those cases where there is more than one MRO working in that office or company). (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-30

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☒ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Medical Review Officer (MRO) Qualifications and Responsibilities

Subtopic(s): MRO Certification

Issue

What are the qualifications and responsibilities of the MRO?

Background

49 CFR 40.3 defines Medical Review Officer (MRO) as "A *licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.*"

In addition, 49 CFR 40.33(2)(b) states "*The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.*"

The FAA provided training for MROs during the early years of the antidrug program's implementation; however, attendance at these seminars was not required nor did they result in any kind of certification.

Policy Position

Although there are several national professional organizations which provide MRO certification, the Department of Transportation does not require any certification of MROs at the present time. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-31

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Medical Review Officer (MRO) Personally Conducting
Positive Verification

Subtopic(s):

Issue

Does the MRO have to personally conduct the verification of a positive drug test result?

Background

49 CFR 40.33(c)(2) states "The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee...the MRO shall talk directly with the employee before verifying a test as positive."

Policy Position

The Department of Transportation (DOT) requirement that the MRO be a licensed physician with knowledge of substance abuse disorders (40.33(b)(1)) indicates the importance that the DOT placed on this function. The regulatory requirement is that prior to making a final decision to verify a positive test result, the individual is given an opportunity to discuss the test result directly with the MRO.

An appropriate medically-trained staff person (e.g., a nurse with substance abuse training) may gather information from an employee about the employee's explanation for a positive result.

Unless the employee refuses to discuss the test with the MRO, or fails to contact the MRO after being directed to do so by the employer representative, however, the MRO must talk to the employee before making the decision to confirm a laboratory positive as a verified positive drug test result. In no case can a staff person make this decision for the MRO. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-32

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Verification Process If Medical Review Officer's
Copy of the Custody and Control Form Is Not
Available

Subtopic(s):

Issue

What are the MRO's review requirements during the verification process when the MRO's copy of the custody and control form is not available?

Background

The preamble to 49 CFR part 40 (Medical Review Officer Issues) published on December 1, 1989, requires the MRO not to declare a verified positive result until he or she receives the hard copy of the original chain of custody form from the laboratory.

This is because, prior to determining that the test is a verified positive, the MRO verifies the identifying information and the facial completeness of the chain of custody (i.e., determines that, on the face of the document, all of the signatures are in the right places).

Policy Position

The MRO may complete the verification process if the MRO's copy of the custody and control form is not available for

review. The MRO needs to review a copy of the chain of custody which contains the employee's signature.

A copy can be obtained from the employee, the collector, or the employer. These copies have the employee's signature. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-33

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Medical Review Officer (MRO) Verifying Each Drug
(Multiple Results)

Subtopic(s):

Issue

Does the MRO have to verify each drug when the laboratory reports that an individual was positive for multiple drugs on the same collection?

Background

49 CFR 40.33(a) states "*MRO shall review confirmed positive results.*"

Policy Position

The DOT drug rule requires analysis of urine for five drugs. Multiple drug positive results for the same specimen (donor) require the MRO to verify each reported drug to determine if there is a medical explanation for each positive result.

Additionally, the DOT drug and alcohol management information system requests information on multiple drug results arising from a single collection. The intent is to capture information on polysubstance abuse.

However, in the pre-employment process, it would appear that with the employer's consent, the MRO may report a verified

positive result for one drug out of several laboratory positive results (for one individual) without continuing to seek verification for other drugs reported by the laboratory. The MRO may need to use his or her professional judgement to determine if verification of the other drugs may be accomplished expeditiously. Regardless of the number of drugs that are reported as verified for one individual on a particular test, that individual cannot perform safety-sensitive work until he or she provides a urine specimen that is verified as negative for all drugs.

In the case where the MRO verifies and reports only one drug, the other drugs should not be reported to the employer if they have not been verified. The MRO may document these unverified positive results in his or her records as unverified and unreported results. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-34

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Company Obligation to Pay for Split Sample When
Primary Specimen is Positive

Subtopic(s):

Issue

Is there any obligation for the employee's company to pay for the processing of a split sample when the primary specimen is positive?

Background

The split sample procedure is a statutory requirement of the Omnibus Transportation Employee Testing Act of 1991 for employers in the aviation, highway, rail, and transit industries.

Section 40.33(f) states in part, "*If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another Department of Health and Human Services-certified laboratory for analysis.*" In other words, if the employee makes the request within this time period, the split specimen must be tested.

Policy Position

The employer is responsible for ensuring that the test of the split specimen occurs, including taking responsibility

for paying for it, in the first instance. The employer may arrange with the employee for reimbursement, but the refusal of the employee to contribute to the cost of the test does not excuse the employer from ensuring that the test takes place.

Naturally, a previous agreement signed by the employee, or a labor-management agreement that specifies payment arrangements could dictate the payment source.

However, the split specimen testing process, initiated by the MRO's written request, should not be delayed while awaiting payment from the employee. If there is a dispute, the fall-back position would be for the employer to be billed (by either the primary laboratory for sending the split specimen, or the receiving laboratory for testing the split specimen) and then for the employer to settle the matter after the fact with the employee. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-35

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Shy Bladder Situation--Physician Who Conducts Medical Evaluation and Is Not the Company Medical Review Officer (MRO)--Reporting Conclusions To Employer

Subtopic(s): Company Corporate or Contract Physician

Issue

In a "shy bladder" situation, if the physician conducting the medical examination is not the company MRO, can that physician report his or her conclusions directly to the employer?

Can a physician who is a corporate or contract physician for the company perform the medical examination?

Background

49 CFR 40.25(f)(iv) states in part, *"The MRO shall refer the individual for a medical evaluation....Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing."*

Policy Position

This rule does not preclude the MRO from performing this medical evaluation if the MRO has the expertise and is willing to conduct this evaluation.

The Department of Transportation requirement that the MRO review the results of the medical evaluation is related to the fact that the MRO may have additional information on the circumstances surrounding the attempt to provide the urine specimen, other pertinent information regarding the collection process, problems or lack of problems during previous collections, etc.

All reporting to the employer regarding the final determination on the results of a urine specimen must be accomplished by the MRO. This includes the findings and conclusions of the medical examination.

If a company has a physician on the staff or has a contract physician, this individual can perform the medical examination if he or she has the required expertise. The company should ensure that the MRO is informed of this arrangement and makes the referral to that particular physician.

However, the requirement still exists to submit the findings of the evaluation to the MRO, who then reports his or her conclusions to the employer. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-36

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Laboratory Redesignating Specimen Bottles

Subtopic(s):

Issue

May a laboratory, receiving a Department of Transportation (DOT) urine specimen collected using the split-sample method of collection, redesignate the specimen bottles in cases where the collector has obviously mislabeled the bottles?

Background

49 CFR 40.25(f)(B) states in part, that the collector *"...pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen."*

Policy Position

In the situation where the collector has labeled the smaller-volumed bottle as the primary specimen (i.e., "A") and the larger-volumed bottle as the split specimen (i.e., "B"), the DOT would allow the (primary) laboratory receiving the specimens to redesignate the bottles.

The bottles must be redesignated prior to the opening of either bottle. On the appropriate bottle, the laboratory shall mark through the "A" and write "B," then initial and date the change. A corresponding change shall be made to

the other bottle by marking through the "B" and writing "A," and initialing and dating the change.

A notation shall be made on the original chain of custody (Copy 1) and on the split-specimen copy (Copy 3).

Additional corrective action should take place, to ensure the collector is notified of the error to prevent its being repeated in future collections. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-38A

Date: August 19, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Donor Cannot Provide Specimen in Three
Hours/Refusal

Issue

In a shy bladder scenario, may a company interpret the Department of Transportation (DOT) regulations to read that if employees do not provide a urine specimen within three hours the company will consider this a refusal to provide a sufficient specimen?

Background

49 CFR part 40 was amended on July 19, 1996, as follows:

40.25 (f)(10)(iv)(A)(2) *If the individual has not provided the required quantity of urine, the specimen shall be discarded. The collection site person shall direct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a new urine specimen, whichever occurs first. If the employee refuses to drink fluids as directed or to provide a new urine specimen, the collection site person shall terminate the collection and notify the employer that the employee has refused to submit to testing.*

(3) *If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection site person shall discontinue the collection and notify the employer.*

(B) The employer shall direct any employee who does not provide a sufficient urine specimen (see paragraph (f)(10)(iv)(A)(3) of this section) to obtain, as soon as possible after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's ability to provide an adequate amount of urine.

(1) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of urine, the employee's failure to provide an adequate amount of urine shall not be deemed a refusal to take a test. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported assertions of 'situational anxiety' or dehydration. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusions to the employer in writing.

(2) If the physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (f)(10)(iv)(B)(1) of this section, the employee's failure to provide an adequate amount of urine shall be regarded as a refusal to take a test. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusions to the employer in writing.

Policy Position

The individual must provide the specimen within three hours. The inability to provide a specimen does not automatically mean that the individual being tested will be deemed to have refused testing. The required medical evaluation would produce the information to draw final conclusions.

If the physician finds that there was no legitimate medical reason for the individual's inability to provide the sufficient quantity of urine, then the donor's failure to provide such a specimen constitutes a refusal to submit to

testing. A refusal to provide a specimen has the same sanctions under 49 CFR part 40 as a positive test.

Once it has been determined that the employee has violated a DOT requirement (e.g., verified positive test, refusal), the employee must be immediately removed from performing any safety-sensitive duties. The employee may not again perform safety-sensitive duties until he or she has met the conditions for return to duty.

49 CFR part 40 does not address employer policies on subsequent personnel actions. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

Final Rule - Federal Register: July 19, 1996, Volume 61, Number 140, Page 37693-37700)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-40

Date: January 24, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Proper Handling and Processing of a Split Specimen

Subtopic(s):

Issue

How is a split specimen properly handled and processed?

Background

49 CFR 40.29(b)(1)(ii) states *"Where the employer has used the split sample method, and the laboratory observes that the split sample is untestable, inadequate, or unavailable for testing, the laboratory shall nevertheless test the primary specimen. The laboratory does not inform the MRO or the employer of the untestability, inadequacy, or unavailability of the split specimen until and unless the primary specimen is a verified positive test and the MRO has informed the laboratory that the employee has requested a test of the split specimen."*

49 CFR 40.29(b)(2) states in part, *"...In situations where the employer uses the split sample collection method, the laboratory shall log in the split specimen, with the split specimen bottle seal remaining intact."*

49 CFR 40.33(f) states in part, *"If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split*

specimen to another Department of Health and Human Services (DHHS)-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the Department of Transportation, the employer, and the employee."

Policy Position

When the primary laboratory receives a split sample, it should log it in (although not accession it for testing) and store it securely. The seal on the split specimen must remain intact--just as the split specimen was sealed at the collection site. If the primary laboratory does not receive a split specimen with the primary, or the split specimen is leaking, or the split specimen's seal is broken, or has any other problem that would make it unavailable for testing, the primary laboratory should still process the primary specimen as if there were no problems with the split specimen. The laboratory should not bring any split specimen deficiency to the attention of the MRO at this time.

Only a request from the employee can authorize the MRO to initiate the forwarding of the split specimen to the second DHHS-certified laboratory for analysis. The MRO will direct the primary laboratory to forward the split specimen to a second DHHS-certified laboratory. At the time the MRO directs testing of the split sample, the laboratory shall advise the MRO of any problems with the split sample of which the primary laboratory is aware. If the split sample is sent for testing to the second DHHS-certified laboratory, the split specimen shall only be used to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen.

If the split specimen is found to be unavailable, inadequate, or untestable at either the primary laboratory or the second laboratory, the MRO shall be notified after a request for testing the split has been made. The MRO shall then cancel the result and notify the employer, employee, and DOT of the cancellation and reason for it. (OST Guidance Interpretation)

References/Sources

Office of Drug Enforcement and Program Compliance 49 CFR
part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-41

Date: November 28, 1995

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Collection Site Constructed to Have Two or More
Stations

Subtopic(s):

Issue

Can a urine specimen collection site be constructed to have two or more collectors or must each collection "station" be physically separated by a barrier or wall to ensure modesty and privacy of the donor?

Background

49 CFR 40.25(a)(2) and (3) states "...A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination, and a suitable clean surface for writing..." and "...If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer...."

In specifying privacy and security of the collection site, the Department of Transportation was concerned that the act of urination by a donor would have maximum privacy under most circumstances and that the specimen sample would be under sufficient security to prevent any allegation of

tampering. Additionally, the regulation requires that the collection site person have only one donor under his/her supervision at any one time. In other words, one collection site person may not process the paperwork or collect a specimen from more than one donor at a time.

There are collection sites, particularly at health clinics, that may have "stations" or booths which are partially partitioned from each other or from the rest of the clinic. The collection site person usually gathers relevant information from the donor at the booth, completes the necessary paperwork, and escorts the donor to a toilet area where the donor can provide a specimen in privacy.

Policy Position

49 CFR part 40 does not permit unauthorized personnel in any part of the designated collection site where urine specimens are collected or stored. In the multiple booth situation, another collection site person would not be considered an unauthorized person. However, when other donors are present in a waiting area or another donor is being processed by another collection site person, the integrity of the specimen must be ensured.

During the collection process, the collection site person must ensure that the specimen is under the direct control of the collection site person from the time the specimen is provided by the donor to the time it is sealed in the mailer.

Additionally, regardless of the physical configuration of the collection site, there is the expectation that the donor will have some degree of aural and visual privacy. For example, a donor may tell the collector that he/she is suffering from a particular illness, is on medication and wonder if this will affect the test results. The donor should be able to make such statements without embarrassment or concern that another individual (i.e., another collector or donor) may overhear or see what the donor is telling or showing the collector. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 95-PP-42

Date: January 24, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☒ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: "Shy Bladder" Scenario-Company Orders Donor Back to Work Prior to Completion of the 2-Hour, 24-Ounce Period

Subtopic(s): Failure of Donor to Complete Collection
Not Considered Refusal to Test

Issue

In a "shy bladder" situation, does the Department of Transportation (DOT) consider a company's ordering the donor back to work prior to completion of the two-hour, twenty-four ounce period an obstruction of the collection process?

Is the donor's failure to complete the collection, after having been compelled by the employer to leave the collection site, considered a refusal to test if no medical reason is provided for donor's failure to provide the required amount of urine?

Background

49 CFR 40.25 states *"If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container."*

49 CFR 40.25 also states *"If the employee is still unable to provide an adequate specimen...testing discontinued, and the*

employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen...constitutes a refusal to test."

The "DOT Urine Specimen Collection Procedures Guidelines" states *"The donor should be under direct observation of the collector or a company representative to prevent the donor from performing actions that would compromise the collection process (drinking excessive fluid, obtaining 'clean urine,' obtaining adulterants, etc.)."* The Guidelines also state "There is no provision to recall the donor at a later date."

Policy Position

An employer that orders the employee to return to work prior to the expiration of the two-hour period, with no provisions for personal observation or for ensuring the employee's return to the collection site, is in violation of 49 CFR part 40.

The employer is not authorized to discontinue a test or to conduct a subsequent collection at a later time in lieu of a current collection. The employer could order the employee back to work while waiting for the two-hour period to elapse, but the employer must ensure that the employee drinks the prescribed amount of liquids, is under observation during the entire period of time, and returns to the collection site prior to the expiration of the two hours.

It should be noted that because the donor was not afforded the full two-hour period during which to provide a specimen, the donor's inability to provide the required amount of urine does not constitute a refusal to test but is the result of employer hindrance of the collection process.

If an MRO becomes aware that the employer is not complying with regulatory requirements, he or she should advise the employer of the correct procedures (as set forth above). In addition, the MRO may report the violation to the FAA or may request that the DOT Drug Enforcement and Program Compliance Office report the matter.

The company is required to maintain, in accordance with 14 CFR part 121, appendix I, a record of this attempted collection for review by the FAA in the event of an inspection. (OST Guidance Interpretation)

References/Sources

49 CFR part 40

14 CFR part 121, appendix I

Office of Drug Enforcement and Program Compliance 49 CFR
part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 96-PP-1

Date: April 22, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☐ 14 CFR part 121
- ☒ 49 CFR part 40
- ☐ None

Subject: Requirement for the Medical Review Officer's (MRO) name in Step 1 of the Federal Drug Testing Custody and Control Form.

Issue: Is a specific MRO name required in Step 1 on the Federal Drug Testing Custody and Control Form, or can a clinic hospital, health care organization, or MRO company name appear in the MRO Name and Address area?

Policy Position: A specific physician's name and address is required in Step 1 of the Federal Drug Testing Custody and Control Form as opposed to only a generic clinic, health care organization or company name. The name should be that of a responsible physician rather than an administrative staff member or other company official. However, a company name can appear as part of the address, provided it is followed by or includes the MRO's name. Collection sites use this address to send copies of the MRO's custody and control form, and drug testing laboratories use it to submit laboratory results to the MRO. The use of the MRO name will preclude potential compromises of confidentiality. In many cases, where only the name of a clinic, hospital, or company appears on the mailing address, the laboratory results are sent to the clinic or hospital and are either circulated

through numerous departments or, in some cases, never reach the MRO.

The physician named in Step 1 can be the MRO who will actually perform the verification review or the name of a physician within the practice (company), but not necessarily the one who will actually perform the verification (in those cases where there is more than one MRO working in that office of company).

Any MRO that is designated on the custody and control form for an FAA-mandated drug test must be listed on, or included in an MRO service identified in, the company's antidrug plan that is on file with the FAA.

References/Sources:

49 CFR part 40

Office of Drug Enforcement and Program Compliance 49 CFR part 40 Guidance Interpretation (1995)

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 96-PP-3

Date: September 29, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☒ 14 CFR part 121
- ☐ 49 CFR part 40
- ☐ None

Subject: Employee Assistance Program - Supervisor Training

Issue: The supervisor EAP training program must include training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. Supervisory personnel who will make reasonable cause testing determinations are required to receive at least 60 minutes of initial training and reasonable recurrent training. What is required in the 60 minutes of supervisor training?

Background: VIII. Employee Assistance Program.

B. EAP Training Program.

Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified above. The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training. The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years.

The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan submitted to the FAA for approval.

Policy Position: Employers are required to conduct 60 minutes of initial supervisory EAP training in addition to the required employee training. The 60 minutes of supervisory training would cover the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. Separate employee training would cover (1) the effects and consequences of drug use on personal health, safety and the work environment; (2) the manifestations and behavioral cues that may indicate drug use and abuse.

References/Sources: 14 CFR Part 121, appendix I, VIII, B.

**Federal Aviation Administration
Drug Abatement Division (AAM-800)
Policy Position**

Number: 96-PP-6

Date: September 29, 1996

Applicability:

- ☒ Antidrug Program
- ☐ Alcohol Misuse Prevention Program
- ☐ Both

CFR Reference(s):

- ☒ 14 CFR part 121
- ☐ 49 CFR part 40
- ☐ None

Subject: Required content of an employer's antidrug policy statement

Issue: Some employers have failed to understand what information must be included in the employer's policy; i.e., they are uncertain whether an employer must include the consequences of receiving one positive test result as well as receiving two positive drug test results.

Background: The regulation states "The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule." It is clear from the preamble that the FAA intended that the employee assistance program provisions of Appendix I require that the employer provide information on all consequences under the antidrug rule of illegal use of drugs, verified positive drug test results, and refusals to submit to testing.

It should be noted that an employer may advise employees of any consequences imposed under the employer's independent authority (e.g. termination); however, the employer could not purport or imply that the FAA's antidrug rule required such actions.

Policy Position: It was the FAA's intent that the employer provide sufficient information to ensure that employees understood the regulatory consequences of prohibited conduct. Therefore the company policy should include at least the following information:

Any individual who has a verified positive drug test result or has refused to submit to a drug test, must be removed from the performance of safety-sensitive functions until the appropriate evaluation(s) and return to duty requirements have been met. For holders of airmen medical certificates, review and action by the Federal Air Surgeon are required.* In addition, any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under Appendix I will be reported to the FAA by the employer within 5 working days of the refusal.

Any individual who has verified positive drug test results on two drug tests required by Appendix I to part 121 and conducted after September 19, 1994, is permanently precluded from performing that safety-sensitive function for an employer.

Any individual who has engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994, is permanently precluded from performing that safety sensitive function for an employer.

*The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform nonsafety-sensitive functions. It is the FAA's position that these issues of termination or reassignment are most appropriately matters for employer/employee negotiation.

References/Sources

14 CFR Part 121, Appendix I, VIII A, E, F (FR 42930 and 42931 dated August 19, 1994)
14 CFR Part 121, Appendix I, Preamble (FR 42922 - 42924 dated August 19, 1994)